EVIDENCE — DECLARATIONS IN COURSE OF DUTY — SINGLE CARD FROM A CARD-SYSTEM AS EVIDENCE. — The plaintiff, a physician, in order to prove services rendered to the decedent, offered in evidence a card, showing the name of the decedent, her address, and the dates of all visits made to her. Other evidence showed that such a card was kept for each patient, and the series formed the only books of the plaintiff. *Held*, that the card was not receivable. *Daniel's Estate*, 77 Leg. Int. 134.

Contemporaneous entries made in the regular course of business are a well-recognized exception to the rule that hearsay declarations are not admissible in evidence. *Shove* v. *Wiley*, 18 Pick. 558; *The Mayor* v. *Second Avenue R. R. Co.*, 102 N. Y. 572. The habitual accuracy of such entries, the ease with which errors are discovered, and the fear of the consequences of such discovery to the entrant make such evidence sufficiently trustworthy. The fact that pages may be readily substituted in a loose-leaf book, lessening probability of discovery, makes entries in such books less trustworthy. Yet the courts receive them. *Wyman, Partridge & Co.* v. *Henne*, 127 Minn. 535, 149 N. W. 647; *Armstrong Clothing Co.* v. *Boggs*, 90 Neb. 499, 133 N. W. 1122. See WIGMORE, EVIDENCE, § 1548. Even separate slips, not bound in any way, such as workmen's time slips and cashiers' deposit slips, have been admitted. *New York Motor Car Co.* v. *Greenfield*, 145 N. Y. Supp. 33; *Ricker* v. *Davis*, 160 Iowa, 37, 139 N. W. 1110. A rule of evidence admitting a single slip of this sort would be open to the objection that the jury can not, in determining credibility, judge of its accuracy by comparison with other entries. This objection would not apply to the principal case, however, because the card contained various entries made at various times. It resembled a complete ledger page. See *Presley Co.* v. *Illinois Central R. R. Co.*, 120 Minn. 295, 139 N. W. 609. Thus the principal case can not be supported.

GIFTS — GIFTS *CAUSA MORTIS* — EFFECT OF THE TRANSFER OF A SAVINGS BANK DEPOSIT TO JOINT ACCOUNT OF TRANSFEROR AND TRANSFEREE — WHAT CONSTITUTES DELIVERY. — Three days before death the intestate, who had a deposit in a savings bank, delivered to the plaintiff the savings account book together with a written order to the bank to pay to the joint account of herself and the transferee. The transfer was accordingly made, and, after the depositor's death, the account was transferred to the plaintiff, who notified relatives of the deceased that she was holding the money for them. *Held*, that the plaintiff is not entitled to the fund. *Hayes* v. *Claessens*, 179 N. Y. Supp. 153 (App. Div.).

A delivery of the specialty with an intention to transfer the entire property will operate to vest in the transferee the legal and equitable interest in the chose. *Hill* v. *Stevenson*, 63 Me. 364. See *In re Meyer's Estate*, 125 N. E. 219 (Ind.); *Cogswell* v. *Newburyport Institution for Savings*, 165 Mass. 524, 43 N. E. 296. And a delivery of the specialty with an intention to convey a joint interest should be effective to that extent. When there has been no delivery of the account book a transfer to a joint account of the depositor and another offers the difficulty that the transferor retains complete control over the subject of the gift. *Denigan* v. *Hibernia Loan & Savings Society*, 127 Cal. 137, 59 Pac. 389; *Norway Savings Bank* v. *Merriam*, 88 Me. 146, 33 Atl. 840. But even in such a case the gift has been enforced as a valid chose against the bank. *Deal's Administrator* v. *The Savings Bank*, 120 Va. 297, 91 S. E. 135. Or as a trust. *Booth* v. *Oakland Bank*, 122 Cal. 19, 54 Pac. 370. Or even as a gift. *State Bank* v. *Johnson*, 151 Mich. 538, 115 N. W. 464. The court has apparently confused the case with the situation where the donor retains complete control. It finds its solution in an absence of an intention on the part of the donor to make a gift. Although the donor may not have intended to vest the full beneficial ownership in the donee, there was an intention to give complete control

and the legal title. This should be sufficient after the bank has made the transfer.

HUSBAND AND WIFE — RIGHTS AND LIABILITIES OF WIFE AS TO THIRD PARTIES — WIFE NOT LIABLE FOR FUNDS FRAUDULENTLY OBTAINED BY HUSBAND AND SPENT BY HER IN GOOD FAITH. — The defendant's husband misappropriated funds belonging to his principal, the plaintiff's decedent. Part of the funds he deposited to the credit of defendant's bank account. The defendant in good faith used the money for household expenses and in cash advances to her husband. In an action for money had and received, *held*, that the complaint be dismissed. *Seagle* v. *Barreto*, 179 N. Y. Supp. 856 (App. Div.).

A depositary of stolen money who returns it to the thief before notice of the theft is not liable. *Hill* v. *Hays*, 38 Conn. 532. Nor is an agent who disposes of a negotiable instrument apparently belonging to his principal, and turns the proceeds over to the latter. *Spooner* v. *Holmes*, 102 Mass. 503. Consequently, as to the funds that the defendant turned over to her husband and those which she disbursed generally at his behest she should be protected. But as to the money expended on necessaries for herself she not only acted as agent but was also the recipient. That being true and the expenditure made being beneficial, she could not plead change of position as a defense, if she were a donee. See WOODWARD, QUASI CONTRACTS, § 29. But she is more than a donee. Her services, it is true, are not consideration, the duty to render them arising from the marriage relation. *Blaechinska* v. *Howard, etc. Home*, 130 N. Y. 497, 29 N. E. 755. She has, however, a legal claim on her husband for necessaries. *Goodale* v. *Lawrence*, 88 N. Y. 513; *Cunningham* v. *Cunningham*, 75 Conn. 64, 52 Atl. 318. See 1909 N. Y. CONSOL. L., DOMESTIC RELATIONS LAW, § 51. And the release of that claim is value and gives her indefeasible title to the money. *Miller* v. *Race*, 1 Burr. 452; *First Nat. Bank* v. *Gibert*, 123 La. 846, 49 So. 593. On this reasoning the result of the case can be supported.

HUSBAND AND WIFE — TENANCY BY ENTIRETIES — WHETHER PERSONALTY MAY BE HELD BY THE ENTIRETY. — An agreed statement of facts set forth that funds which were the proceeds of real estate owned in entirety by a husband and his wife and of personal property also owned by them were used to purchase store property both real and personal. The administrator of the husband's estate excepted this property from his accounts as property of the wife, and the account was allowed by the Probate Court. *Held*, that there was no error. *George* v. *Dutton's Estate*, 108 Atl. 515 (Vt.).

In some jurisdictions married women's acts have abolished estates in entirety and have substituted therefor tenancy in common. *Thornley* v. *Thornley*, [1893] 2 Ch. 229. See *Pray* v. *Stebbins*, 141 Mass. 219, 4 N. E. 824. In other states tenancy by the entireties still exists. *Buttlar* v. *Rosenblath*, 42 N. J. Eq. 651, 9 Atl. 695; *Hiles* v. *Fisher*, 144 N. Y. 306, 39 N. E. 337. If realty is held in entirety, estates in entirety may exist in personalty growing out of the realty. *Vartie* v. *Underwood*, 18 Barb. (N. Y.) 561. At common law, chattels could not be held in entirety. See 1 BISHOP, MARRIED WOMEN, § 211. Whether choses in action which do not come within the doctrine of conversion can be held in entirety has been disputed. The orthodox common-law view is against estates in entirety in any personalty. *Blake* v. *Jones*, Bail. Eq. (S. C.) 141; *Re Albrecht*, 136 N. Y. 91, 32 N. E. 632. See 21 HARV. L. REV. 446. It is strange that since the passage of the emancipation statutes courts should follow the analogy of realty when dealing with personalty. Since estates in entirety in personalty were not recognized at common law *a fortiori*, they should not be sanctioned under the statutes which aim to abolish antiquated doctrines. But the possibility of estates in entirety in personalty finds some support. *Phelps* v. *Simon*, 159 Mass. 415, 34 N. E. 657; *Bramberry's Appeal*, 156 Pa. St. 628, 27 Atl. 405.